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Note on the draft Rent-Bill of the rent commission

Year: 1881

Sub: Law and Legislation / Tenancy Bill

Place: calcutta

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NOTE

ON THE DRAFT RENT-BILL OF THE RENT COMMISSION,

BY THE

East Bengal Landholders' Association.

1. The word "owner" in the definition of the word "proprietor" in section 3 perhaps would preclude trustees and persons having a life interest only in the property; as well as *mutwallies* of *wakf* properties, and *shebaits* of *debutter* estates, and such other persons from being recognised as proprietors; thus debarring them from exercising any of the rights or enjoying the privileges given under the Bill expressly to proprietors.

2. The words "tenure" and "under-tenure" are now generally used indiscriminately for the same thing, and such use is admittedly not restricted to private documents; they are so used in public documents and they have been so used even in the Acts of the Legislature. Under such circumstances the distinction now made instead of remedying the evil will complicate matters and aggravate the evil. Then again the classification of "under-tenures" "in degrees" being altogether new will create misconceptions in the minds of the uneducated people who are the majority, and who are unused to such fine distinctions; and thus instead of making matters easy for them, these will on the contrary mislead them.

3. The definition of the word "ryot" is objectionable. It excludes from the category of ryots, persons to whom pasture lands or lands yielding grass or straw for thatching purposes or such other lands, not intended for cultivation, are let.

4. This much alone would not be very objectionable. But explanation 2 of section 22 defining "land," includes "pasture" lands as well as lands for "other similar purpose." Section 22, providing as it does substantive rules for the enhancement of rent of ryots having a right of occupancy, would again indirectly make tenants holding such lands not only "ryots," but would also give them right of occupancy in such lands. This view is furthered by the exclusion of "pasture or like lands" from section 41; such exclusion evidently leading to the conclusion that provision has elsewhere been made as to these lands. At all events these contradictions would foster and protract litigation.

5. The clause "or by persons to whom he has sublet the land or any part of it" in the definition of the word "ryot" is objectionable, as it would give the right to sublet his land, perhaps indirectly, to every ryot whether of one or of 12 years' standing.

6. The definition of the word "land" is objectionable. Although this definition does not include buildings, but it would evidently cover lands on which buildings and shops stand, whether these lands lie in villages or in towns. It has also been made to include "woods and water thereupon." Hence under the provision of section 41, a right of occupancy will be gained by tenants, perhaps indirectly, in forests, fisheries, and even in lands with buildings let out for hire.

7. The definition of the words "tenant" and "landlord," taken with the definition of "ryot," "rent," and "land," would make the provisions of this Bill applicable to tenants holding lands or shops in *kutcha* or *pucka* houses, as well as to persons living in hired buildings. This Bill would thus by its title very probably oust the jurisdiction of Small Cause Courts in rent suits for such lands and buildings. Yet there is no express provision to that effect. Section 165, which provides for rent suits, relates only to lands, but does not include rent for buildings let out for hire. This will remain an open question and complicate matters and foster litigation. In case such suits are expressly made cognisable by the tribunals empowered to decide

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rent suits for land, then that would undoubtedly create difficulties now unfelt in the realization of rent of such holdings. This Bill, creating as it does many rights and privileges, as well as obligations and liabilities in the relationship of such tenants, will confuse the present system with no good return. Rent suits have been made cognisable by Collectors concurrently with Civil Courts, and rent suits relative to buildings, where questions of repair, of keeping the house in good order and the like are daily raised, will receive very indequate consideration from the executive body of the Government.

8. There are other peculiar questions incidental to the relationship which subsists between the owner of the house and the tenant to whom the house is let out for hire. The Bill, although framed with the evident intention of covering all questions that may arise between every description of landlord and tenant, does not make any express provision as to these. Yet from the title and the definition of the words mentioned above this would seem to be the only law governing such cases.

9. In sections 6 and 16, the year of the Permanent Settlement has been given as 1793, but there are estates which were settled permanently subsequent to that year. It is apprehended that the statement of the year of the Permanent Settlement so definitely will raise many difficult questions where the tenant's rent was fixed in 1794, but before the permanent settlement of the particular estate in which the tenure, under-tenure or holding is situate.

10. The extension of the provisions of section 51, Reg. 8 of 1793 from talukdars holding under zemindars to all under-tenure-holders will be very prejudicial to the interests of all zemindars. In the Report of the Rent Commission it is stated that the tenures and under-tenures which will come to be protected by the extension of this provision is "probably small." But it is submitted with due deference to the opinion of the learned members of the Commission, that the number of such tenures and, specially, under-tenures is not small. This extension will create a wholesale change in the rights and procedure of enhancement of rents of under-tenures, and give such under-tenure-holders a right which they do not enjoy under the law and which will be detrimental to the interests of their superior landlords.

11. *Sections* 8 *and* 18. One provision in these two sections is very objectionable. But before adverting to that, it is necessary to take objection to the word, "*added*" to be found in both the sections. It may be contended that this word may also mean added to the *area* and not only to the tenure, under-tenure, or holding as included within the original boundary. This ambiguity will cause many disputes and litigation. This very word used in section 6 of Act 9 of 1847 gave rise to many Dearah cases and much correspondence. It has been contended in these cases that the word "added" means added to the quantity of the land originally settled; and this notwithstanding the provision in that section for finding out the addition by a comparison of two survey maps. In the sections now under consideration the words "diminution of the area" (for the purpose of abatement), and the words "which the increase or diminution of area bears to the previous area," will further the contention that, the addition is also meant to include the area or quantity of land originally settled with the tenant. That a provision with such a meaning is detrimental to the interests of zemindars, and injurious to them, will be apparent from the action of the Dearah authorities in respect to the assessment made by Government on lands added to estates. The following illustration is given to make the matter clear. An estate, A, containing 500 biggas of land according to the first survey and paying a Government revenue of Rupees 50 a year, is let out in *putni* for an yearly rent of Rupees 100. Subsequent to this there is diluvion of 250 biggas of its land on the Eastern and an accretion of 250 biggas of land on the Western side. The quantity remains the same. The zemindar and *putnidar* do not take an abatement in the hope of future reformations on old site. The Government assess the new accretions on the Western side according to the present rates at annas 12 per bigga $= 250 \times \frac{3}{4} = \frac{750}{4} =$ Rs. 187-8 annas, and allowing the zemindar a deduction of 30 per cent. (Rs. 56-4 annas) fix the revenue at Rupees 131-4 annas, and this the zemindar is bound to pay,

together with the original revenue of Rupees 50, *i. e.*, altogether he pays to Government Rupees 181-4 annas. But he cannot get any increase of rent due to him by the *putnidar*, for no lands have been "*added*" to the "*area*" of the *putnidar's* tenure. The quantity of 500 biggas has remained unaltered. Even if the zemindar had taken a reduction on account of diluvion, he would have obtained a reduction of only Rupees 25 and allowed the *putnidar* a reduction of Rupees 50. So in this case he gets from the *putnidar* only Rupees 50, but pays Government Rupees 156-4 annas, or Rupees 25 less than the previous rent. In the first case he suffers a yearly loss of Rupees 81-4 annas, and in the second case of Rupees 106-4 annas.

12. The most objectionable provision in these two sections relates to the rate or proportion of the increase of rent on account of additional lands. In this matter not only great injustice but material injury has been done to the landlord. It is very strange that the learned framers of the Bill entirely overlooked the action of Government in such matters, *viz.*, assessment under Act 9 of 1847. It is difficult to understand why the zemindars, who are assessed by Government according to the rates prevalent in the lands that have accreted to their estates, and not according to the proportion which the permanently settled revenue bears to the quantity of the lands orginally settled with them, should be unable to claim increased rent according to the actual and prevalent rates in the added lands, and why the same principle which is adopted and acted upon in such cases between Government and zemindars should not be adopted and acted upon in similar cases between landlords and tenants. According to the construction of the rule contained in these two sections, in some cases there will be no increase of rent as far as the zemindar is concerned, while in those very cases the Government will impose an assessment on the newly formed lands which the zemindar will be bound to pay. Again in some other cases the zemindar will get but a small increase of rent, while he will be forced to pay a very large amount and would thus suffer a loss, simply because there has been an accretion to his land subsequent to the first survey. An illustration of this will make the relative position of the parties—the Government, the zemindar, and the tenure-holder, clearer.

13. In the zemindary *Govindpur* there is a *taluk* Ram Krishna Bose. The *taluk* originally had only 500 biggas of land, and paid an yearly *jumma* of Rs. 50 only. Subsequent to the first survey 250 biggas have accreted to the *taluk*. The rates prevalent in the newly formed lands are 12 annas a bigga. The Dearah authorities assess the 250 biggas at Rupees 187-8 annas minus 10 per cent. as collection charges and 20 per cent. as *malikana*, and fix the Government revenue at Rupees 131-4 annas for the 250 biggas. The zemindar is entitled to get from the talukdar according to section 8 only at the rate of Rupee 1 for 10 biggas (according to the proportion the old *jumma* bore to the original quantity of the land), and therefore only Rupees 25 for the 250 biggas, and make good from his pocket the remaining Rupees 106-4 annas. It is submitted that irrespective of any liability on the part of the zemindar to pay any extra assessment to Government for accretions, the zemindar should be entitled to get, as increased or additional rent, all the realization from the additional lands with a deduction of 15 per cent. to be made in favor of the tenant.

14. It is urged that even "in cases of express contract to the contrary," the zemindar should be entitled to increase rent at least where there is Government assessment on the additional lands. The increase in such a case may be the full amount of revenue the zemindar is obliged to pay to Government for the additional lands, together with 15 per cent. on the assets as malikana and 5 per cent. as collection charges, *i. e.*, altogether 20 per cent. on the gross receipts: leaving the tenant to enjoy 5 per cent. as *malikana* and 5 per cent. collection charges, thus making up the 30 per cent. allowed by Government at the time of assessing the revenue. If no such provision is made, then the zemindar, who, without foreseeing the action of Government lately adopted under the Dearah surveys, may have made any contract barring enhancement in cases of accretion, will suffer very great loss.

15. The discretion given to courts by the proviso of section 9, to allow tenure-holders

and under-tenure-holders up to 30 per cent. of the profits, is objectionable. In such cases the courts lean towards the tenants, and whenever they err in exercising a right discretion, they err in favor of the tenant. So in almost all, if not all, such cases the maximum amount will be adjudged to be the tenant's share. The allowance of 20 per cent. of the profits is the highest amount given by Government even to zemindars as *malikana*, whenever the latter are entitled to any. Why then the maximum amount allowable to tenants should be 30 per cent. it is difficult to comprehend.

16. The words "a reasonable rent" in the latter part of section 9 may be expunged, and provision made that in such cases the rent that may reasonably be obtained for such lands at the time of the enhancement according to the prevalent rate in the tenure or under-tenure for such lands, shall be calculated for such portions and included in the gross rents. If no such provision be made, tenure-holders and under-tenure-holders whose rents are liable to enhancement according to the proviso of section 9, will defeat the object of the proviso to a very great extent by themselves occupying large portions of the land or making rent-free grants or leases at nominal rents in the name of their dependants and relatives, but in reality, enjoying the profits of the grants. The words "reasonable rents" are vague, and will cause disputes and foster litigation.

17. Clause (a) of section 10 is also objectionable. The provision of the enhancement up to the limit of the customary rate is a sufficient check against arbitrary enhancement. The further limitation of not allowing the enhancement to go beyond double the amount previously payable, would be not only detrimental to the interests of the landlord, but would be injurious to the tenant as well. The indulgent landlord who has allowed his tenant to hold on without any enhancement suffers, whereas the oppressive zemindar who has been keeping up his enhancement in full swing from time to time, does not lose by the arrangement. Because the tenant has been allowed to pay below the customary rate, and because the zemindar has allowed the tenant to make large profits for a number of years, the zemindar must suffer loss for a further period of 10 years, and that, after probably a protracted and costly litigation, is very hard and unjust. A provision like the one contained in clause (a), section 10, will keep the zemindars always on the alert, and instead of creating any good feeling between them and their tenants will inevitably engender ill feeling between the parties. It may be true that in some cases only, double the amount of the rent previously paid would fall much below the customary rates, or would allow the tenant to get very much above the 30 per cent. provided. But it is also very true that in very rare cases only would such a provision be necessary to protect the interests of the tenants. The customary rate can never be said to be hard on the tenant, and the allowance of 30 per cent. where no such rates exist is more than equitable. Even the zemindar does not get so much. When he is entitled to *malikana*, 20 per cent. is the highest rate allowed him as his profits. Why then should the tenant obtain more from the zemindar than the latter obtains from Government, and why checks and limitations should be imposed, cannot be accounted for.

18. The provision for a gradual increase for five years is open to grave objections. Considering the "law's delay," the cost of litigation and the length of time it takes to bring the issue between the parties to a termination, the gradual increase of the enhanced jumma and its distribution over five years will be a poor return for the money, time and labor expended. Another objection to this clause (a) of section 10 is this, that it is so framed as to cover a case of enhancement under section 8 for alluvion lands. If the restriction to double the amount of the original rent, and the provision of distributing the enhanced jumma over five years by gradual increase, be made applicable to accretions, the zemindars will suffer very serious loss.

19. Section 11 is one of the most objectionable sections of the Bill. It is one of those sections of the Bill which, if allowed to remain, will revolutionise the whole system of land-tenures in Bengal; it will create an unknown, an unforeseen, an unnecessary, and even an unasked-for right in favor of tenants, and at the same time be most prejudicial and detrimental to the interests of landlords. It will be an

infringement of the vested rights of landlords. It will take away a valuable right from them without any the least compensation. It will bestow new rights and privileges on a favored class of persons, imposing no liability or obligation on them, while it will impose liabilities and obligations on the class of persons from whom these valuable rights are taken away. In order to create these new rights for a newly created class of persons, the landlords are to be restricted in exercising their just and inherent rights over their property.

20. Section 11 is specially objectionable:—

(*a*) for it has a retrospective effect;

(*b*) for it overrides both custom and contract;

(*c*) for the check to the acquisition of the right, *viz.*, by letting out the land from year to year, is in most cases impracticable of adoption;

(*d*) for the adoption of this check is inconvenient both to the landlord and tenant;

(*e*) for it is injurious to the interests of zemindars, who would prefer to lease out lands in convenient quantities to one person by one demise, but will now be debarred from doing so under the provisions of this section;

(*f*) for it is injurious to the interests of tenants, as they will not get so much land as they now do from one person;

(*g*) for it creates the status the very moment the grant is made;

(*h*) for it creates a new class of tenancy of a complicated nature for the first 12 years with no definite legal incidents attached;

(*i*) for even before it becomes permanent and transferable after the lapse of 12 years, no one in possession of it can be ejected;

(*j*) for by making it a tenure within the meaning of sections 8, 9 and 10, enhancement of its rent becomes as difficult as of the oldest tenures, or in other words, practically impossible;

(*k*) for it places these tenures on the same footing as the oldest tenures, and bestows unfair advantage over the old tenures without any the least compensation or return to the zemindar;

(*l*) for it allows even such a tenure-holder 30 per cent. as the share of his profits;

(*m*) for, on the death of such a tenure-holder without heirs, the land passes to Government, and not to the zemindar.

21. The explanation attached to section 14 will create some confusion. In the old settlements of *khasmehals* this word *putni* has been often used with reference to *shikimi* taluks, the lands of which were settled from time to time at enhanced rents with the old talukdars after the Government became owner of the parent estate at sales for arrears of revenue. The Government having sold these *khasmehals*, private individuals have now become owners of them. Under such circumstances, if the word *putni* is allowed to raise a presumption in favor of the tenure-holders, it will cause much trouble and difficulty in enhancing the rents of such tenures. Further, this explanation seems to be quite unnecessary. The courts may be left to themselves to make any presumption they may find equitable where such a word is used.

22. Although it is now too late to raise any objections to the presumption that is allowed in favor of ryots, tenure-holders and under-tenure-holders on their showing an unchanged rate of payment for 20 years, yet any further concession to the ryots on this head cannot but be deemed at most unfair. And such a concession has been made in their favour by the explanation attached to section 17. For a period of more than 20 years, the ryots have been enjoying the benefit of this presumption. They have in the majority of enhancement cases raised this plea, and they are so fully aware of this their defensive armour, that they never omit to use it whether it suits their cases or not. Under such circumstances it would be making this injurious presumption still more injurious to the landlord. This provision will encourage tenants to adduce false evidence without the risk of any penalty for false verification. Why this special favor is to be shown to persons who do not themselves plead such a well-known plea is unaccountable. It is therefore urged that this explanation which virtually

confers additional substantial rights may be expunged.

23. There are several objections to section 19, as it stands, although the intention of the learned framers of the Bill is to confer a right of occupancy by this section to those ryots only who hold culturable lands for cultivation; but since the old wording of the section has been allowed to stand after the new definitions of the words "land," "tenant," and ryots," the wording will create great difficulty and grave doubts as regards the meaning of the section.

24. In the first place great distinction has been made by the definitions between a "ryot" and a "tenant." And according to the definition of "land," land held by a tenant need not be for culturable purposes. Hence the words "as a tenant held" will lead to the conclusion that the land under the section need not be for cultivable purposes only. It is true that the use of the word "ryot" in this section would preclude such an interpretation, but it is no less true that the use of the more comprehensive word "tenant" would lead to doubts, disputes and consequent litigation.

25. Then there are objections to the spirit of the section. According to the definition of the word "ryot," right of occupancy under this section will be conferred even on a person to whom land is let and who does not cultivate it, but sub-lets it to another. That such a provision is not to the interests of the agricultural class, and that this will introduce a new class of middle-men, cannot be denied. Exceptions taken to the various provisions of the Bill which are calculated to cherish and increase sub-infeudation, will appear in their proper place.

26. Clause (c) of explanation 3 of section 19 will show that it is meant to confer rights of occupancy to persons who have been let into and kept in the possession of lands from year to year, or being let into possession for different terms have completed 12 years on account of the landlord's indulgence. It is contended that express provision should be made that right of occupancy shall not be acquired when the ryot is kept in possession for 12 years, when the land is let out to him from year to year or for a term or terms. It should also be provided that a person shall not acquire a right of occupancy when he does not himself, or through his relatives, servants or hired labourers, cultivate the same, and in order to ensure this end the definition of the word "ryot" should be changed.

27. Zemindars, as a rule, generally do not oust their tenants unless they persistently fail to pay rent or prove obnoxious in other ways, and as a rule they prefer to keep old tenants in possession of their lands. But they have a prejudice against ryots acquiring a right of this nature, and the natural result will be that no tenant will be left to enjoy the same land for a long period. There will be frequent evictions and change of tenants. This will tell in the long run very much against tenants for whose protection and benefit the provision is intended. If explanation 2 is allowed to stand as framed, a proviso should be added to it to the effect that a ryot shall not acquire a right of occupancy if he knowingly takes a lease and comes into possession through a wrong-doer, or colludes with a wrong-doer and participates in the wrongful act. Such a provision would check wrongful dispossession and much litigation. The principle contended for is to a great extent supported by the proviso contained in sub-section 8 of section 79.

28. Clauses (c) and (d) in the 3rd explanation of section 19 should be altogether expunged. They are highly objectionable. By clause (c), rights of occupancy under a right of occupancy will be created *ad infinitum*. Most emphatic and earnest protests are submitted against the power or right of sub-letting by a ryot having a right of occupancy.

Clause (c) not only allows sub-letting, but even bestows right of occupancy to an unlimited number of sub-lessees coming by degrees one under the other. The object of the Government is to ameliorate the condition of the actual tiller of the soil, who lives entirely on its produce; also to protect the actual cultivators from rack-rent and to exterminate, if possible, middle-men who have no interest in the cultivation or improvement of the soil. How then do the Commissioners propose such a system of sub-infeudation which will ruin the tillers of the soil and fill the country with an oppressive

horde of middle-men, whose sole object will be to get as much as they can from the tillers, and pay as little as they can to the landlords? The mahajans and money-lenders whose connection with cultivable soil is so much deprecated will be the very persons who will gain by a system of sub-letting. They will buy up occupancy tenures, and having nothing more to do with the soil, they will sub-let the land to either the same ryot or to others, and endeavour to profit themselves at the cost of the ryot. When such is the effect of simple sub-infeudation, it is easy to imagine what the effect will be of allowing a number of occupancy-right-holders to remain one under another in the same piece of land between the landlord and the actual cultivator. The profits of the same piece of land will have to be divided amongst a number of people without satisfying anyone, and this simply because of this new created complication. In case of sale of the occupancy tenure for its own arrears, the incumbrances will remain, and thus the value of the holding will be almost *nil*. It will lessen the security of the landlord's arrears, without any gain to the occupancy-holder under whom the second occupancy is created. After a number of years the aid of the legislature will have to be invoked again for classifying these occupancy-holders into different degrees, and to settle their respective rights and obligations. The system of land-tenure now so simple, will be complicated and confused to an extent beyond remedy. Instead of clause (c) it would be proper to frame a provision to the effect that a right of occupancy would be forfeited as to the whole or part of the land which is sub-let by the occupancy-holder, and the landlord should be permitted to realise the rent of that holding or part, as the case may be, direct from the sub-lessee who may then acquire a right of occupancy under the landlord. Of course in such a case provision shall have to be made for a rateable deduction from the rent previously paid by the occupancy-holder for his entire holding when a part only of it is sub-let. Such a provision will at once check all sub-infeudation by ryots who have paid nothing for acquirement of their right or spent nothing for its security, and will keep away money-lenders and mahajans from buying up occupancy-holdings in the hope of being able to sub-let them at a profit. If the right is of any value the ryots ought to secure the same by cultivating the land themselves, by their relatives or by hired labour. In very rare cases this may be hard on minors or widows, but these persons may lease out lands in Burgá (বর্গা), or some special provision may be made for them to sub-let without the sub-lessees acquiring any right of occupancy. But in order to meet such rare cases it is not proper to enact any general provision for wholesale sub-infeudation. Then as to sub-leases already granted by ryots having rights of occupancy, they are undoubtedly few, and if it is contended, forfeiture should not be the penalty for such acts; yet to allow such sub-lessees to acquire rights of occupancy would be highly objectionable and prejudicial to the interests of both landlords and ryots. Provision may be made for resumption of such lands by the occupancy-holders into their own hands and a certain time allowed them to do so, and in case of their failure the landlord may be held entitled at his option either to resume these himself or collect rent directly from the holders. It is respectfully suggested that the proviso contained in the last sentence of clause (c), *viz.*, "If such land is held or occupied otherwise than for a term, or year by year," should be added to or embodied in section 19.

29. Clause (d) should be expunged. This makes an alteration in the existing law prejudicial to the interest of proprietors. Large zemindars seldom have *khamar* or *nij jote* lands. It is only small proprietors that keep *khamar* lands, and that for their own maintenance and not for profit. That was evidently the reason which found favour with the framers of Act X of 1859, and they excluded these lands from the operation of the right of occupancy clause, and perhaps that very reason has induced the framers of the present Bill to exclude lands of tenures and under-tenures from the operation of the right of occupancy clause. But there are numerous estates of less area and less value than many tenures and under-tenures. Under such circumstances to legislate in favor of one set of owners simply because they hold tenures or under-tenures and to sacrifice the interests of proprietors because they hold estates is no

doubt very unjust, and the distinction would undoubtedly seem to be very invidious

30 There are objections to clause (h) of explanation 4 Instead of the provision as it stands the following amendment is respectfully submitted —

'By a ryot, who has contracted in writing with his landlord that a right of occupancy should not be acquired in the land of his holding, if such contract has been made at any time before the acquisition of the right, and if such written contract has been duly registered"

The object of this amendment is apparent If acquisition of the right of occupancy is to be barred only by a contract made at the time of first letting out the land, and if no subsequent contract is to be of any avail, it will be the interest of all landlords to evict all ryots who have not already acquired such right And these evictions will cause great distress, dispute and litigation, and be ruinous to the ryots The provision now embodied in clause (h) will be an incentive for such Acts on the part of the landlords who would otherwise be quite willing, nay, glad to keep the tenants in their present possessions if they are allowed to make contracts barring the acquisition of the right It is in the interest of both the landlords and the tenants that this amendment is suggested

31 Clause (b) of section 20 decides the most disputed question, *viz*, transferability of occupancy rights in favor of the ryots and against the landlords Much has been said and written on this subject by persons representing the two different classes. But in the interests more of ryots than of landlords, it may be said that this clause should be expunged

32 As to (clause e), section 20, it is submitted that ejectment for non-payment of rent after decree, as the law at present stands, should be allowed to landlords, leaving it optional with them either to sell out the holding or evict the tenant The experience of the last twenty years' has shown that landlords have seldom abused the power given them by law, and that such a provision is a salutary check against ryots falling into arrears Then considering that payment of rent is the condition on which every holding is held and is inseparable from the right of occupancy, considering also that if the right itself be so valuable to the ryot he should be careful to keep it safe by regular payment of his rent, and considering that the landlord may eject where non-payment of rent is a breach of a stipulation in respect of which the ryot and the land lord have made a written contract, it cannot be said that to allow the present law to remain is hard on the ryot Exception may be taken to the last sentence of this explanation (e) which provides the payment of a compensation to ryots in case of eviction on account of any breach of stipulation The breach of a stipulation relating which both parties have most willingly made an agreement and reduced the same in writing is an infringement of the landlord's right, and if in awarding a decree for specific performance of that contract, the ryot is allowed a compensation it is simply punishing the landlord for seeking redress of wrong done to him and rewarding the tenant for committing the wrong This provision should be entirely expunged

33 In the case of crops other than staple crops the maximum amount of rent has been fixed by section 21, where there is no contract, to 25 per cent of the gross value of the crops This is not equitable The rate varies from 40 to 50 per cent in different districts in Eastern Bengal, and there is no reason to depart from the present rule.

34 The new rules for enhancement of rent instead of making matters easy have increased difficulties and created complications, and have imposed new limitations and restrictions on the amount of enhancements, and have not only made enhancement virtually impracticable, but in case of a decree for enhancement, these rules will deprive the landlord of any profit considering the costs incurred, the troubles undergone, and time spent The grounds of enhancement are the same, the wording of them almost the same, the difficulties as to comparison of the status and class of the ryot and the quality of the land remain the same. A few words providing a comparison between the old and present productive powers of the land, and a comparison between old and present price of the produce, and some restrictive words

to the effect that the present increase, whether of the productive powers of the land or of the value of the produce, should be from causes not merely temporary or casual, have been added, and these are no doubt in keeping with the dicta of the rulings of the High Court. Then as regards the illustrations, at least some of them, instead of clearing up will probably raise some doubts and difficulties. Illustration (c) of ground 1 under section 22 will raise doubts as to who are ryots of the same class. A ryot under a proprietor and one under a tenure-holder do not belong, under this rule, to the same class, though they may cultivate the same class of land.

35. Illustration (c) of ground 2 is not, properly speaking, an illustration, but it is a *substantive rule* against enhancement for excess lands where the boundaries are definite. Perhaps the object of the illustration is to guard against enhancement in cases where the parties, knowing full well what they were about, made the contract for a specific piece of land, not so much for the quantity of land, as for the piece of land within the specified boundaries, whatever its quantity be; and where that quantity is mentioned not so much for fixing the rate of rent as for giving an approximate idea of its extent. In such a case it may be just to keep the parties bound to their mutual understanding and undertaking. But the illustration would cover many more cases, and in order to cover such rare cases if such a wide provision is allowed to stand, it will work injuriously both to the landlord and the tenant.

36. Illustration (e) of ground 2 of this section 22 cannot be said to be an illustration at all. It is clearly a rule of substantive law, and should therefore be embodied in a separate section.

37. Clause (a) of explanation 1 is most objectionable. It defines a landlord (who is entitled to enhance the rents of ryots having the right of occupancy) as a person having a *permanent* and *transferable* interest in the land, &c. Now, according to this definition, trustees, *mutwallies* and *shebaits*, and like other persons, would be precluded from enhancing the rents of ryots having rights of occupancy.

38. Explanation 2 of this section 22 is also very objectionable. In the first place the word "land" as used in this section has been defined to include land for "*pasture* or other similar purpose." Admittedly there are lands used for other than cultivable purposes. And it is therefore to supplement the general definitions of ryot, and land held by a ryot, contained in section 3, that land here has been made to include "lands for *pasture* and other similar purpose." Now this extension of meaning of the word "land" here will cause much confusion and lead to dispute and litigation. Section 22 provides substantive rules for the enhancement of the rent of ryots having rights of occupancy. Of course that means in respect of the lands to which they have a right of occupancy. And these rules relate to lands "for pasture and other similar purposes." Hence the reasonable conclusion is that these lands are such in respect of which rights of occupancy may be gained. And this contention is supported by the word "tenant" used in section 19, objection to which has been already submitted. However weak these contentions may be, they will at all events be a fruitful source of dispute and litigation.

39. In the next place objection may be taken to the proportion (*vide* explanation II) to be observed for the purpose of enhancing the rent of pasture lands. Although the word "pasture" only is used in this part of the section, yet as no provision is made for lands of "similar other purpose," the word "pasture" would also cover this last class of lands. Lands yielding grass or straw for thatching purposes would probably also come under this classification. It is a well-known fact that the value of such grass or straw, or the value of the yield of the pasture land, rises not with reference to any rise in the value of the crops of arable land. The value of the yield of such lands depends entirely on the question of supply and demand which depends on rains and floods or the quantity of such lands that may have increased or decreased from various causes. In short, these lands are totally different from arable lands. Under such circumstances to determine a proportion between the value of the produce of any year and then to apply the same for the purpose of enhancement will be extremely unjust and arbitrary, and will neither satisfy the landlord nor the tenant.

40. As to the limitations and restrictions imposed by section 23 against enhancement of rent, many objections may reasonably be urged. By the last sentence of clause (a), the ryot has been allowed one-half of the increase that may have taken place without the agency or expense of either the landlord or the tenant. It is difficult to find out any reason why so large a share should go to the ryot in such a case. The ryot took up the land at a certain rent and obtained a certain return for the same; that rent was admittedly fair, and the tenant was satisfied with his return. After some time, from some cause the land becomes more productive or the price of the produce is increased. Why should not the whole of this go to the landlord? It has been contended by many that the ryots have an interest in the soil; they must share in its produce. But in that case they should suffer a portion of the loss, if any. Where the productive power of the land or the price of the produce is decreased, not through the fault of either the landlord or the tenant, the ryot should also bear half the loss of the decrease. Such a proposition would be looked upon as preposterous. But there is no reason why it should not be so if the ryot is to share the increase. Again in cases of payment in kind it is well known that the landlord gets $\frac{1}{3}$ or a least $\frac{5}{16}$ in return for the use of his land or in lieu of rent, and even in this Bill by section 21 one-half the gross produce is allowed to the landlord, and the tenant has the other half for all the outlay and labour, which may be fairly taken to be equivalent to more than $\frac{1}{4}$ of the produce, so that there would remain at most $\frac{1}{4}$ as his profit. In the present case there is no labour and no outlay for the increase. The share therefore that the ryot ought to be allowed should not exceed $\frac{1}{3}$ of the whole.

41. One of the objects of the movement which has given rise to the present Bill was the simplification of the rules relating to the enhancement of rent of ryots having a right of occupancy. Some attempt no doubt has been made to gain that object, but unfortunately, the difficulties remain the same. The procedure portion of this subject may not be open to objection, if it be possible to carry out the same without harassing any party concerned. If a table of rates and enhancement *jamabandy* may be made without heavy cost, it will no doubt be a boon to the contending parties. But however easy it may appear theoretically, in practice it will be the most difficult task that a Collector can be called on to perform. The classification of the lands plot by plot, and the ascertaining of the prevailing rates in the vicinity for the same class of lands held by the same class of ryots, will be the most difficult questions to be decided by him. It is not to be expected that such detailed enquiries will be carried out by the Collector himself or even by his Deputy. It will invariably be entrusted to a venal *Amin* who will no doubt incline to this or that side as may best suit his interests. A table of rates or an enhancement *jamabandy* once made is to remain in full force for 10 years, and this, though provided with the object of diminishing litigation and for ensuring peace, will induce the tenants to make more substantial offers to buy up the *Amin*. The outlay for this will be divided between the whole body of tenants and will not fall heavy on them. Then again in *uthit patit mehals* (in estates where some lands are held *thioka*), and in places where lands are ever changing from one class to another, the application of a table of rates will be beset with almost insuperable difficulties. So much for the procedure to be adopted on the substantive rules as to enhancement.

42. As regards the substantive rules themselves, it cannot but be remarked that the proposed provisions do not in the least clear the vagueness of the present law. The same words "prevailing rates," "same class of ryots," "land of a similar description and with similar advantages," remain unaltered. And there are a host of rulings of the courts interpreting these words in different ways. The only alteration made in the 1st clause of section 22 is by the word "vicinity" for "places adjacent." A number of rulings have interpreted the last two words, and it may be said, have attached a particular meaning to them. Now by the proposed alteration no good will result from it. The courts will not attach the same meaning to this word for the evident reason, that if it were so, then there would not have been any

necessity for the alteration. Hence, for some time at least, the meaning of this word will be the subject of contention till a few rulings of the High Court set the matter at rest, and this can never be expected before a large number of suitors have suffered.

43. Instead of clearing the long felt difficulties in ascertaining the prevailing rates, &c., the present Bill only provides certain very reprehensible checks and limitations on enhancement. By reading section 23 an impression is left on the mind of one who is not cognisant of the working of the existing enhancement law, that perhaps it has been ascertained as a fact that at present the ryots having rights of occupancy are very much harassed and impoverished by the landlords under the present law, and that perhaps the existing law allows rack-renting, and consequently these provisions are needed to check this abuse and impose restrictions on the maximum amount of rent payable by a tenant. It is a well-known fact that at present enhancement can only be obtainable under clause 4 of section 22. The increase of rent under clause 2 is, properly speaking, no enhancement at all; it is simply payment of rent generally at the old rate for the use of excess lands. To obtain an enhancement under clause 1 is always very difficult. Clause (b), section 23, imposes two restrictions on enhancement under clauses 3 and 4. Clause (c) is a third check. All these will combine to give the landlord whichever be the lowest amount according to the provisions of the three clauses. But this so-called lowest amount is the maximum to which the rent of the ryot is liable to be enhanced. And can it be reasonably expected, that this highest amount will be decreed by the courts to landlords? It is a fact that the courts always lean towards the tenant whom the tribunals deem to be an object of sympathy; and sympathy will invariably cause the reservation of a little margin out of the maximum amount payable by him. There is a further check provided by clause (d). The increase may be distributed over five years, so that the landlord gets the full increase from the fifth year.

44. It should be noted here that the way in which clause (d) has been worded would empower the court to distribute the enhanced *jumma* over five years even when the enhancement has been allowed on the ground mentioned in clause 2, *viz.*, for excess lands. If the heavy cost involved in conducting an enhancement suit be taken into account, also the length of time necessary and the amount of trouble undergone to bring it to a conclusion, the provision as to progressive enhancement will undoubtedly be deemed to be unjust. The last, though not the least, check on enhancement is contained in clause (e) of this most reprehensible section. Why the ryot should get a deduction of the Road and Public Works cesses on his old rent in case of an enhancement, and why this loss is to be suffered by the landlord, it is difficult to understand. The facilities for going to markets and bazars, afforded by the construction of roads in the village, will benefit the ryot more than the landlord, though the latter has borne half the cost. Why then should this consideration be shown to the ryots it is hard to imagine. It is earnestly submitted that if no better provision can be made in the place of the present law of enhancement, it is proper to leave the law as it is. To impose the restrictions contained in section 23 would be most unfair, unjust and uncalled for. It is therefore submitted that section 23 be expunged.

45. Chapter IV is another most objectionable innovation. Many of the general observations submitted, with reference to section 11, more or less apply to this chapter. This chapter should be expunged from the Bill. The rights and privileges given under this chapter to ryots holding the same piece of land for three years, will deter a landlord from keeping or allowing any tenant to be in possession of the same piece of land for more than a year or two. Such a proceeding on the part of the landlords, which they will be forced to adopt, will not only be very troublesome for the landlords themselves, but will also be very much against the interest of the ryots. Frequent change of hands will be a bar to even any temporary improvement of the soil by the tenants. It is not at all easy for landlords to let out such lands year by year. In order to make such letting out year by year reliable in the opinion of the courts, it will be

necessary to secure registered *kabulyats* and give registered *pattahs*, a proceeding not at all easy to adopt, and which will impose unnecessary and even ruinous cost. The system of imposing the burden of yearly *pattahs* and *kabulyats* is not only odious to the notions, but is also incompatible with the habits of the people of this country. It is also evident from a comparison of sections 11 and 41, where express mention is made of the time from which the period is to be counted, that this section is intended to have a retrospective effect, and will entitle the ryot to the benefit of this chapter as soon as the Act is passed.

46. The provisions contained in this chapter will complicate the system of land tenures to a very great extent by creating a new class of ryots with some very peculiar rights and privileges quite unknown in the country. The advantages granted to such ryots are inimical to the landlord's interest without any commensurate profit given to him in return. It is undoubtedly a piece of class legislation in which the landlord's interests are lost sight of. The power given to landlords for eviction by demanding an increased rent is also nominal. In the first place, whenever the tenant will contest the demand, the courts will raise an issue as to whether the rent asked is fair and equitable, and notwithstanding the provision contained in section 27 (a), the courts, considering the provision contained in section 35, clause 2, will not in any case decree any rent that it may consider unfair and inequitable. Many rulings of the High Court will support the view that when the landlord wants to increase the rent of even a tenant at will by a notice, he shall not get more than what is fair and equitable. When clause 2 of section 35 provides that even in case of a ryot holding land for less than three years, the enhancement through the Civil Court can never be more than double the former rent, and when the case of ryots holding for three years or more is on a higher and better ground, their rent will not even reach the double amount, but will fall much below the same. Thus the power of enhancing rent or getting out the land from such a ryot's possession would be out of the question. In the second place, if the courts be held bound to decree the amount asked under clause (a), section 27, even then it would be next to impossible to evict the tenant by asking an exorbitant amount as increase. Section 28 will entitle such a tenant to get the same exorbitant amount as compensation for disturbance, and again another amount as compensation for improvements under section 29. Hence to eject such a tenant would be out of the power of an ordinary landlord unless he be driven by *malice prepense* to incur an unwarrantable amount of expense in order to get himself rid of the tenant. By asking any reasonable amount the tenant cannot be disturbed at all, and by asking an exorbitant amount, either the landlord gets only a reasonable amount, or the demand recoils on the landlord like the famous boomerang and inflicts on him a heavy damage for his presumption. Thus it is that the landlord must not trouble himself with any idea of ejecting a tenant of this class, however refractory he may be, and however insulting his conduct may be towards him. The traditions of the country and the customs and habits of the people favor and accept the idea that the ryots are the children of the zemindar. But the laws of the realm are gradually subverting that notion and creating a formal and artificial tie and thereby engendering dislike and distrust of each other. Now-a-days there are few attempts at evictions. To the adoption of this extreme measure the landlord is not at all led, unless forced by circumstances of great necessity. So long as the ryot knows that he should depend on the good-will of his landlord for his success in life, the relationship between landlord and tenant is easy and smooth; but when he will come to know that he has no favor to ask of his landlord, that in fact he could defy his landlord without involving any serious consequences, he will become haughty and overbearing. The provisions of this chapter, instead of making matters smooth, will cause agrarian disturbances, will subvert all system and arrangement, and, in short, cause a revolution in social life, the far-reaching consequences of which it is not easy to foresee.

47. The provision for compensation for disturbance is very peculiar. How-

soever reasonable may be the demand for increased rent, the tenant may by electing to relinquish the land gain one year's rent, and then take another piece of land from another landlord even at the very rate or more or less. Again when the landlord has committed a mistake by demanding an increased rent, he cannot even remain at peace by repenting for his error. The tenant is at liberty if he elects to relinquish his land, which he would by all means do, as he suffers no loss whatever; rather on the contrary makes a clear gain by enforcing the payment of the amount demanded from him by the landlord.

48. The provision as to compensation for improvements contained in section 29 is likewise very objectionable. In the first place, let it be seen what are designated as improvements under this section, the provision of which has likewise been made applicable by section 20, clause (e), to the case of an eviction of a ryot having a right of occupancy under section 19. For an explanation of the words "dwelling-house, &c.," contained in the explanation appended to section 29, the proviso contained in section 36 should be consulted. According to the last mentioned proviso any ryot may, without the consent, nay, even against the wish of his landlord, erect upon any part of the cultivable land let out to him, a brick-built or other permanent building for his use. And yet such an act will not be looked upon as an infringement of his landlord's right, and will not subject him to eviction. He will be perfectly at liberty to dig tanks, and convert the paddy field into a kitchen, garden or an open lawn, and thus virtually be the landlord of the place. His position will be better off than his landlord who runs the risk of his estate being sold for arrears. But this man who came as an ordinary ryot is safe from eviction not only by his previous landlord, but even by the purchaser at a sale for arrears of revenue. His rent cannot be enhanced. Properly speaking, the ryot by these so-called improvements gets the land virtually alienated to him for ever, and this notwithstanding the impotent rage and fruitless protests of his poor landlord. The only check that might have existed against such acts of open defiance is swept away by section 29 which provides the payment of a compensation for these wrongful acts of the tenant.

49. The last sentence of section 30, which makes a decree for compensation up to 50 Rupees final and conclusive, is also objectionable. In these cases of compensation complicated questions of various sorts and specially of account will be raised, and to make such cases final up to Rs. 50 would be very unjust and improper.

50. Section 31 is the most objectionable section in this objectionable chapter. It gives a screw in the hands of the tenant to crush his landlord. Why this plea or rather a pretence of claim for abatement has been put into this section cannot be imagined. It would have been as well to provide that whenever a ryot of the class mentioned in this chapter wishes to abandon or relinquish his holding, he shall be entitled to one year's rent as bonus or gratuity from the landlord, and also the price of houses he may have built by which he has damaged his landlord's land and infringed his right. To call the year's rent (to be paid by the landlord to his tenant when the latter leaves the land), a compensation for disturbance is undoubtedly a misnomer. If anybody is disturbed in this instance, it is the landlord, and not the ryot.

51. In a case when the amount of the rent depends upon the mutual understanding of the parties, and when the tenant even under the provisions of section 27 is not entitled to remain in the land if he does not consent to pay any amount, the landlord would choose to demand, and when non-payment of the rent agreed to entitles the landlord forthwith to evict him, in such a case, to provide that the tenant is entitled to claim an abatement is undoubtedly preposterous. This is a peculiar provision which gives a tenant at will the privilege of claiming an abatement. It is true the section does not in so many words bind the court to allow an abatement, but when it binds the court to allow a compensation for disturbance and another compensation for improvements, it virtually recognises the right to abatement, or at all events allows the tenant to wield this claim as an offensive and defensive instrument against his landlord, and thus gives him an opportunity, in some cases at least, to attain his object. This section will very likely give tenants

(a speculative tenant) a source of income without any outlay at the cost of his landlord or landlords.

52. This chapter virtually gives a ryot of 3 years' standing almost all the rights which a ryot of 80 years can possibly enjoy. If the right of transfer proposed to be given to a ryot having a right of occupancy be excepted, the position of a ryot under this chapter is perhaps better than that of a ryot having a right of occupancy. As far as sub-leasing is concerned, both are on an equal footing. So also with respect to erecting dwelling-houses, digging tanks, &c. The ryot with a right of occupancy is as much liable to eviction for any breach of stipulation as the ryot under this chapter. Both are equally entitled to maintain suits against their landlord for the determination of rent at which they shall be entitled to hold their lands. And this right of a ryot of 3 years' standing may be gathered from section 32, clause 2, when a ryot of less than 3 years' standing is expressly excluded from such a right. In the case of enhancement of rent the occupancy ryot cannot relinquish his holding, for if he does, he does at a loss to him, the provisions for compensation for disturbance and compensation for improvements not helping him in that case. But if he chooses not to pay the enhanced rent, his holding is sold, and he then has to content himself with the hope of realizing something from the sale-proceeds after the rent and costs are paid up. The sale-proceeds are an unknown quantity, and may not give him, after deducting all claims and charges, an amount equal to one year's *jumma* at the enhanced rate claimed, together with the full value of his improvements. But not so uncertain is the case of the ryot of 3 years. He is served with a notice of enhancement, and he, without incurring any expense or trouble for contesting it (like his brother with the occupancy right), elects to abandon the land and gets a clear sum equal to the *jumma* demanded, together with the full value of the improvements, and this free of all cost and trouble. There is not much difference in the case of abatement. Both can claim abatement on the same grounds. In the case of a ryot with the occupancy-right, the landlord is bound to allow abatement if the ground is substantiated; in the other case, the landlord is allowed the option to choose between two evils,—either to allow abatement, which must necessarily mean a yearly loss of small amounts for some time, or to pay in a lump one year's unabated rent and the price of the improvements. In one way the position of a ryot of 3 years' standing is even superior to that of a ryot of more than 12 years. The right of the latter may be barred by an express contract, but that of the former cannot be done so unless by letting out to him for a term or from year to year. On account of the very serious innovation that is intended to be made by this chapter, by extending rights of occupancy to ryots of 3 years' standing, and on account of the grave importance of the matter, it is again most respectfully submitted that this chapter 4 should be entirely expunged.

53. The provisions of chapter 5, with some alterations, should be made applicable to all tenants who have no rights of occupancy. Although the word "tenant" is used here in the comprehensive sense in which it has been defined in the Bill, but tenure-holders and under-tenure-holders are not to be taken as included within the word as used here. The consent of the landlord mentioned in clause 1, section 33, should be expressed, and not implied, in order to entitle the ryot to a notice when he has been holding over his term. It should be the ryot's business to get such a consent after his term is over before he enters into the land again. Such a provision will be good for both parties, and check some dispute and litigation. The provision contained in clause 2 of section 33, as to serving a notice of ejectment through the Civil Court, is objectionable on the ground of its being costly for no purpose. The provision in clause 3 of section 79, which deals with the subject of the service of a notice from the tenant to the landlord in the matter of relinquishment, may be as well made applicable in this case.

54. The proviso in clause 2, section 35, which provides that in no case of enhancement shall a tenant of this class be liable to pay more than double the former rent, is objectionable. In the first place, because this is also the maximum of enhancement of the rent of a ryot having the occupancy

right. Secondly, because the explanation appended to this section would entitle a ryot to remain in the land even against his landlord's will. When in the notice of ejectment by some inadvertence or mistake, or when by following the ordinary mode of drafting such notices, the landlord has asked a very high rent as an alternative to eviction, believing that the ryot would be obliged to leave the land from sheer inability or unwillingness to pay the amount demanded, the ryot may elect to remain in the land, and then this notice is to be treated as a notice under clause 1 of this section. This means that the notice is to be treated as a notice of enhancement. Then clause 2 comes into operation, and according to its provision the tenant would not be bound to pay more than double the old rent. Thus a refractory tenant might remain in the land by paying the excess amount, though the object of his landlord was to eject him. And this may happen just in time to make up his time when by remaining 1 year he would be liable to acquire a right of occupancy. It may be urged against this contention that the landlord is to thank himself for such an inadvertence or mistake, but it should also be borne in mind that the complicated way in which the sections are drawn up will lead many to commit such mistakes. It is also therefore submitted that the proviso should be expunged altogether.

55. Chapter 6 is another of the most objectionable portions of the Bill. The whole of this chapter should be expunged. The homesteads of cultivating ryots or ryots to whom culturable lands have been let out for cultivation, are sufficiently protected by explanation of the word "bastu," under the general definition of the word "land." Hence there is no necessity for this chapter at all in the interest of the cultivators.

56. If the legislature is determined to create a new right in favor of persons other than cultivators, the right of occupancy may at most be given them over their homestead lands when they have occupied such lands in villages as their homestead consecutively for a period of 12 years, after the commencement of this Act, and have been paying rent for the same. But no such right ought to extend to lands in towns, bazars, hâts, or to lands used for shops and stalls, &c., or for storing goods and merchandise. Nor should such a right be made transferable, except by inheritance, or for its own arrears at a sale at the instance of the landlord.

57. As a rule for the enhancement of rent of such land, the maximum amount to which the rent of such holdings may be enhanced may be fixed at 9 per centum per annum of the market value of such land.

58. Section 36 would indirectly entitle any ryot, as is mentioned in section 19, without the permisson of his landlord, and perhaps even against his will, to use any portion of land used or let to be used for agriculture, horticulture, pasture, or any other similar purpose, for building, or for any other purpose inconsistent with that for which it was used or let to be used as aforesaid. The injustice of such a provision is apparent. Perhaps it is an oversight, and therefore any remarks are unnecessary.

59. It may be simply added here that such a right should not be given to any description of tenants. It is a well-known principle that even a co-sharer in joint property is not entitled to any such permanent buildings to the prejudice of his other co-sharers without their consent. In some cases no doubt it has been held that when one co-sharer is allowed to do such acts without any objection from the others, such buildings cannot be pulled down, but damages or compensation in some shape may be realised from such a wrong-doer. Under such circumstances, to allow common tenants to do what one of several joint owners is not entitled to do, and to call such acts improvements and to allow such acts to be done as of right, notwithstanding the protests of the landlord, and to disallow him from seeking any redress for, or even to put a stop to these works through the courts, cannot but be an infringement of the landlord's rights in the land. It is a most valuable right, to obtain which the tenants now pay a large amount as *salami* or bonus to the landlord. The ryots do not and cannot suffer from not possessing such a right. Those that are capable of erecting permanent buildings and out-offices are also capable of buying up the lands on which these are to stand, or at least to pay an adequate

salami or bonus as would induce the landlord to part with his right In very rare cases only are such permanent buildings attempted to be raised. To make a general provision to meet the requirements of such rare cases would be most prejudicial to the landlord in many ways, without conferring any appreciable benefit on the generality of the agricultural population in the country

60 For the reasons stated above, section 36 should be expunged. Section 37 should be so changed as to make any ryot who begins to use any land without the written permission of the landlord, for any pucca building or any other purpose inconsistent with that for which it was used or let to be used, liable to eviction even in the absence of any express contract to that effect, and also liable to restore the land to its former condition, or pay damages if such condition has been altered

61 The provisions of the Specific Relief Act and the Civil Procedure Code may be applicable as to injunctions which the landlord shall be entitled to obtain against the ryot to make him desist from such wrongful acts It cannot be expected of landlords that they shall always remain informed of the doings of their tenants at a great distance from their seat or head-quarters Hence it would be very hard to refuse them redress of such infringments simply because they are not on the alert The words "reasonable time,' used in sections 38 and 39 are therefore objectionable Two years may be fixed as the time within which the landlord may either sue for ejectment on the issue of any notice or injunction against the ryot

62 Section 41 has been most objectionably framed According to the definition of the word "land," right of occupancy may be acquired even in fisheries and forests, in lands on which there is a dwelling-house, or a shop, when such land has been let out for hire with the dwelling-house or shop There is no reservation All lands will come within the action of the section There is a piece of land in the heart of a town, on a portion of it stands a building, and the rest is covered by a garden, a tank and a small lawn This is let on hire to a gentleman at a monthly rent, and he completes 12 years' possession of it either continuously or after two or three breaks of some years It is submitted that he cannot be ejected from the house and the land In the land he has got his occupancy right, even if not in the house, and as the one cannot be separated from the other, he cannot be ejected from either The rent which he paid was not for the building only, but also for the land as well There is no exception made in cases where the land is let out for a time or from year to year There is no provision that the 12 years should be consecutive or continuous Nor has payment of rent been made a necessary condition for the acquirement of the right as provided by section 19

63 The value of all such lands will get on decreasing instead of increasing with the progress of trade and prosperity of the country This apprehension may appear to be unfounded but it is too true The operation of section 42 will make 5 per centum per annum of the market value of the property, the maximum amount of rent realizable on such holdings, and this will reduce the value of the property Government paper yields 4½ per cent, and this free of all costs For land there is the revenue or rent to be paid, then the Road-cess and the Public Works cesses Some expenses have to be incurred for collecting rent and the difficulty of realizing it is immense Some consideration should also be made for outstanding balances of unrealized rent Again there is the risk of launching into litigation with tenants or others After all this expense and trouble, and some ineffectual attempts at enhancement, at last a five per cent per annum is the maximum amount of reward to cover all that Who would under such circumstances invest money in land? The demand would fall down and with it the value of land Even now people consider investment in land as a bad speculation so far as profit is concerned It is only the security of the investment and the honor attached to the possession of land that has kept up its value If the Bill be passed into law, landed property will very much decrease in value After the rent has once reached the 5 per centum maximum, the value of the land will remain stationary, and thus the rent will virtually be a permanent one It is for these reasons that this chapter (6)

should be expunged, and provisions as suggested be enacted in lieu thereof.

64. The manner in which sections 43 and 44 have been framed will lead to a doubt as to whether the presumption raised in that section will or will not be applicable to cases that happened *before* the Act. In case it be held that the presumption will have retrospective effect, great injury will be done to parties concerned. It will then create a revolution in the system in which estates and tenures, &c., have been so long held. It is therefore submitted that it should be expressly provided that the provisions of these sections will not apply to cases that have occurred before the passing of the Act. If the legislature intend to give effect to this section in respect to past transactions, at least 6 months' time should be given to the proprietors, and such landlords as are mentioned in sections 43 and 44 to declare their contrary intention. The provision in clause (a) of section 43, that a presumption shall be made in favor of merger, unless a contrary intention appears, would be a fruitful source of litigation. If it is urged that the presumption can only be rebutted by a contrary intention, proved according to clause (b) of this section, then it is submitted that the word presumption becomes useless; the word "held" might be used instead of the word "presumed."

65. The words "in the same right and at the same time," in sub-clause 1, are rather vague and are susceptible of meanings which may lead to doubts and disputes. The words "same interest" may be used in framing this clause. For example, A and B purchase each 8 ans. of an estate in January 1879. Subsequently, A purchases 10 ans. of a tenure and B the remaining 6 ans. of the same at the same time. Again A may purchase 8 ans. of the tenure at the same time he purchases the estate, and B may purchase the other 8 ans. one year after his purchase of the estate jointly with A. Moreover, A might have succeeded as an heir to the 8 ans. of the estate and purchased 8 ans. of the tenure, and B might have got by will 8 ans. of the estate and obtained the 8 ans. of the tenure by gift some time after A purchased the 8 ans. In such cases questions will arise as to whether any merger can at all take place, and if so, when?

66. The principle of merger, as taken from the civil and the English laws, is quite unknown in the moffussil. The provision by its novelty is likely to cause some difficulty and some injury to people holding two rights in the same property at one and the same time. If the principle be extended to the moffussil, it will take time to be well understood by, and to be rooted in the notions of, the people. It is a thing which they will not easily comprehend, and this will cause mischief by over and under valuation of properties sold either privately or in execution of decrees. The question of intention and proof of the declaration of such intention will complicate litigation and embarrass transactions of sales and purchases. It is true that it is desirable that the complications in the shape of the same person having different rights in the same land at one and the same time, be avoided or even rooted out. But as the principle of the foreign laws has been taken in its integrity, no such good result can be hoped for. The principle embodied in the Bill is of the incorporation or extinction of the inferior right in the superior, when the superior right-holder subsequently comes to be the owner of his immediate inferior right. But an equal number of complications will remain untouched in the cases of inferior right-holders subsequently becoming owners of immediate superior rights. Such cases are not governed by the principle of merger. And thus after a length of time questions will arise as to which right was owned first. Hence it is not possible to avoid all complications of this sort. If anything must be done in this direction, provision should be made for the extinction of the inferior right in every case of ownership of the superior and its immediate inferior right by the same person at one time. It does not make any great difference so far as utility is concerned, whether the tenure was possessed first or the estate.

67. Three months would be a short time, as given by clause (b) of section 43, for declaration of the intention to keep the two rights separate. At least 6 months' time should be given. Before 6 months the landholder can scarcely know all the facts and circumstances relating to his new acquisition, and before that he cannot,

properly speaking, make up his mind as to the course he should adopt. Provision should also be made to the effect that if any question arises within the aforesaid 6 months as to whether any tenure has merged or not, it should be decided in the negative, and that no presumption of merger is to arise within the time allowed to choose a course. The last sentence of this clause, commencing with the words "and by proof &c.," should be expunged. The publication of the deed in the manner provided is really not of much use. But the great objection to the provision is the utter impracticability of keeping evidence of such publication for any great length of time. Such evidence can easily be got up by unscrupulous persons. But those that have scruples will suffer on account of the obligation to prove this additional fact. The question may arise some 12, 15, or 20 years after the act. Hence for unscrupulous persons this will be an inducement to get up false evidence, and for honorable persons it will be a bar to their success for no fault of theirs.

68. Section 45 seems to be out of place in this Bill, and also unnecessary. The illustration which makes a distinction between rent and revenue will raise grave doubts as to the status and rights of ryots in Government *khasmehals*.

69. The objections against transferability of rights of occupancy would necessitate some changes in the wording of the sections of Chapter 8. The personal liability spoken of in section 48 seems to be contradictory to the provisions contained in section 64. If it means subject to the provisions of the latter section, then it is not of much importance or efficacy. It may be said to be merely nominal. The whole tenure or under-tenure or holding remains liable for the arrears, whether the same accrued before or after the transfer. The question of this divided liability may be of importance in any case that may arise between the transferer and the transferee as to their respective liabilities. But as between landlord and tenant the question is not of any great importance, cannot the landlord proceed at the first instance against the defaulter? The words "reasonable time" used in clause (c) of section 48 are very vague. There seems to be no very great reason for not fixing a term within which the notice must be given.

70. The limitation prescribed in the latter part of section 51 is variable—the longest being two years, when the succession or transfer has taken place on a 1st of Bysack; and the shortest being one year when the succession or transfer has taken place on a 30th Choit. It is therefore submitted that one fixed term of one year may be provided for the case in question.

71. The finality of the Judge's order under section 53, clause (c), is objectionable. The old law did not provide an appeal, but in the interest of both the landlord and tenant an appeal should be allowed.

72. The proviso contained in the italicised words in the latter part of section 56 should be expunged. These words will simply leave a loophole for dispute. The payment of a small interest on making a default, for whatever cause it may be, cannot be said to be very hard on the ryot. Although, properly speaking, there can be only very rare cases in which it may be reasonably urged that the ryot was prevented by causes beyond his control from paying his rent, yet the very existence of such a provision to meet such very rare cases would be a source of dispute. It is therefore submitted that this portion of section 56 be expunged.

73. In sections 58 and 59 the words "and cesses" should be inserted after the word "rent" wherever the same is used. It is doubtful whether the definition of rent would include the Road and Public Works cesses imposed upon the tenant and payable by him through the landlord. In section 58, clause (b), the words "or their agents" may be inserted after the words "such co-parceners" and before the word "therefore."

74. The words "full acquittance" used in section 60 will probably create some difficulty and doubt. How can the receipt for the amount deposited be held to be a "full acquittance" of the rent payable by the tenant before the question of the amount payable is determined. It is true that section 59, clause (c), provides that the full amount of rent due shall be deposited. And it is also true that the officer receiving the deposit is to take the amount in com-

pliance with the provisions of section 59. But as the officer charged with this duty has no enquiry to make, he cannot be satisfied that the requirements of the sections have been complied with. He has simply to go upon a declaration of the tenant of somebody on his behalf. The tenant may either intentionally or unintentionally deposit a less amount. It is therefore submitted that the words "full acquittance" should be expunged, or so qualified as to mean only an acquittance as far as the amount paid covers. The meaning intended is no doubt what is contended for, but the manner in which the words have been used may lead to some dispute.

75. In order to simplify matters and avoid delay and circumlocution, the words between the word "forthwith" and the word "cause" in section 61 may be expunged. It is not at all likely that the notice served according to the provision of the portion wanted to be expunged will be effective. In the court of the officer receiving deposits there will be innumerable notices, and it is not probable that any notice specifying a deposit will attract attention. It is also not very probable that all landlords will have proper persons in such courts to look after such notices.

76. By section 64 the landlord is forced to put up an occupancy-holding to sale for the recovery of his arrears. In the case of tenures and under-tenures this may not act prejudicially to the landlord or the tenant. For in such cases the amount of the arrears is sure to be realized even leaving a balance in the surplus proceeds of the sale in favor for the tenant. Payments are very likely to be made even before the sale actually takes place. But such is not likely to be the case in case of sales of occupancy-holdings. Where the village is thickly populated by cultivators, where the demand for land is more than the supply, there only an occupancy-holding will fetch a price that may pay the landlord's arrears and also have something for the ryot. But in places sparsely inhabited by agriculturists, where there is not much demand for lands, the sale of the holding will not even pay the arrears. In the last class of cases it will be the interest of the tenant to defer payment of his rent as long as he can by cajoling the landlord by promises of payment, and unless the payment is forced by a sale every year, the landlord is likely to suffer a loss, without any prospect of ever being able to make it good. In the first class of cases, the tenant will be sold out, and thus cast away from his home and hearth and possessions. Under such circumstances it would be advantageous to both parties if "occupancy-holdings" were excluded from the action of the provision contained in the latter part of the section. And if it be further provided that it would be optional with the landlord to put up the holding to sale or to realize the rent by other processes allowed by the Act, such a provision cannot be said to be prejudicial to the interests of any class. It gives only an additional remedy for the realization of the landlord's just dues.

77. Chapter 10 is another of the most objectionable chapters of the Bill, and contains some provisions very dangerous to landlords. Co-parcenary is an institution of the country. There are very few estates, tenures or under-tenures, which are owned and held by single individuals, and not owned and held by co-parceners. In few cases only the co-parceners have joint management. Generally they collect rents and manage separately. There are also cases in which this is done in groups by some co-parceners having joint collection and management separate from another group of co-parceners. There are again those who have a very large share or interest in such co-parcenary properties with persons who have only the smallest fractional shares. The blow that will be dealt against co-parceners by the provisions of this chapter will reach all classes of such co-parceners, and will be felt by all classes of landlords in the country. Instead of mending matters and instead of furthering the cause of peace, this chapter will be an instrument, and a very dangerous one with all, to harass and virtually to ruin the majority of landlords. This will be the easiest method of dispossessing them from their lands, and vesting the management of all private landed properties on the State. It will virtually make them idle annuitants, depending upon the allowance given them by the Court of Wards or the manager appointed by the District Judge. It will most arbitrarily take away their independence, and divest them of their just and inherent rights.

In short, by embodying the mischievous principles of some rulings of the High Court, and by extending them further to subjects and cases not coming within their scope, and by re-enacting the provisions of a section of an almost forgotten and an almost obsolete Regulation half a century old, the Rent Law Commissioners have prepared an instrument which will bring about most harassing disputes and litigation, and encourage refractory tenants and even owners of infinitesimal shares to wreak their vengeance in a most wanton manner.

78. Section 65 would include even joint owners having separate collections. It would thus force them to adopt joint management. It would make them amenable to the penalty provided by clause 2, even where there is the remotest likelihood of any inconvenience to the public or any injury to private rights arising from it. It would clearly empower the Judge if he chose to adhere strictly to the letter of the law to appoint a manager, where the slightest inconvenience to the public or the slightest injury to private right has ensued. These last words have been taken from the regulations as found there, without any mitigation of their stringency. And on the contrary, the words "sufficient cause," for such interference with private rights, to be found in the regulations, have been done away with without any thing better being put in their place. The provision in the Regulation which covered only estates has been made applicable to tenures and under-tenures. No provision has been made for an appeal against the Judge's order, and his order, however unjust and arbitrary, remains final and conclusive. Such are the provisions of section 65 which give the same power as was given by the old Regulation to anybody and everybody who has any interest, however trifling, in the land to create a revolution in its management, or at least to drag its numerous co-sharers in court, and harass them for a great length of time. By the wording of clause 2 of this section, the onus has been laid on the co-parceners to show cause why they should not appoint a common manager. The notice calling upon the co-parceners to show causes may be issued on the simple application of any person interested in the land in question. Nothing more need be done by the applicant. The whole burden is to be borne by the co-parceners. Then again no provision has been made allowing an appeal against the order made by the Judge. There is also no appeal against the appointment of a manager, nor against an order refusing his removal prayed for on sufficient grounds.

79. By section 68, the District Judge will not be authorised, after the property has once been entrusted to a manager, to restore it to the co-parceners, unless they can satisfy him that they will manage the property jointly. No arrangement for separate management will serve the purpose, even if the same be calculated to ensure convenience to all parties concerned.

80. Section 69 has embodied the gist of some rulings of the High Court, and without making any improvement on the present law, or affording any facilities for the realization of rent by co-sharers, has left the law where it is. The word "parties" used in this section is vague, and it has become more so by the use of the word "defendants" in the 3rd exception to this section. It may on this account necessitate the making of the other sharers plaintiffs in the case, and this without their consent would be impracticable. Then again the question of cost, the difficulty of executing the decree and of realizing the plaintiff's dues, would complicate matters to such an extent, that a suit for arrears by a co-sharer would be not only impossible in the majority of cases, but even a decree will be almost valueless. The practice of making *pro formâ* defendants of the co-sharers who do not join, if allowed in such cases, and if the plaintiff be allowed to sue for his share of rent only, it would be a move in the right direction.

81. In Bengal, where co-parcenary estates abound, such a provision is very necessary as far as the realization of rent is concerned. This may not be extended to the case of enhancement of rent, unless the plaintiff can show separate collection. Such a provision is objected to on the ground that it would be giving the instrument in the hands of co-sharers to harass the ryots. But how the ryots are harassed it is difficult to understand. It is the duty of the

ryots to pay their rents in proper time. If they pay up, no suit can stand. If the rent tendered by these is not accepted, they can deposit the same. If they don't do either, they are to blame, and they cannot find fault with the landlords for the suit or suits that may be brought against them. Yet if it is deemed necessary to protect the ryots from such apprehended harassment, provision may be made that in case of one suit by one sharer the ryot would be entitled to deposit the whole arrears of his holding in case of decree, and notice of the deposit will be given to the other sharers at his cost. It may also be provided, as in exception 3, that in case of such separate suits, if the ryot can satisfy the court that the separate suits have been collusively brought by the sharers simply to harass the tenant when they could have brought one suit, the ryot will be entitled to get his costs.

82. Government has made provision for protecting the shares from sale for arrears of revenue in case he opens a separate account, but in this case, when the management has been once joint, there is no remedy, save a costly *butwara* of the lands, to be completed in a number of years. It is therefore necessary that some provision should be made by which a co-sharer may once for all settle the question of his share and separate himself from the joint body and manage and collect for himself. To make him dependant for this on the will and consent of the ryot would be not only unfair, but would also be an unjust and unnecessary restriction imposed on the free enjoyment of one's own rights. In exception 1 to this section, the words "with the consent of the other or others of them" is most objectionable. If the tenant agrees to pay separately, there the objection as to harassment ends. Why the consent of the other sharers is to be taken to that agreement, and what is the object of and necessity for it, cannot be easily perceived. These words impose an additional restriction to those that already make the exception altogether useless by the impracticability of obtaining the consent of all the other sharers to a separate collection, even when the ryot's consent is obtained.

83. Section 70 is a very objectionable section. There is no exception to the provisions of this section even in cases of separate agreement or separate collection or collusion of the other sharers with the ryot. A co-sharer who has been all along collecting his rent separately from the others, and one who has got separate *kabulyats* for his share, is most unjustly debarred by this section from making separate arrangements for his rent, if that rent happens to be an increased amount. He cannot make a contract for an increased amount even with the ryot's consent, and even when he has not the necessity of invoking the assistance of any court for the same. Why this liberty of action is to be taken away from the parties, simply because the landlord has the misfortune to be a co-sharer, cannot be imagined.

84. This section also debars a co-sharer from making a private measurement of his lands at his own cost, and without the assistance of any court. Why such a restriction is to be put upon the exercise of a right which does not injure anybody, nor even harass any one, is also beyond comprehension. Even a co-sharer, who has separate management of his share, cannot measure the lands for settling his rent, or in order to sue or defend himself against the suit of anybody else; although section 70 would go to show as if a suit for measurement only would lie, but actually there is no such provision made in the Bill. In no ordinary cases will this be allowed even if all the sharers are made parties. It is only where the landlord can satisfy the Collector that he is unable to ascertain the ryots who are liable to pay rent to him, or the plots of lands for which rents are payable, that a measurement will be possible in the shape of a *settlement jamabandy*. That such a provision is quite ineffectual to meet all the requirements of measurement is apparent. The objection taken to the word "*parties*" in section 69 applies equally to the use of the same word in this section. This section virtually takes away all rights of property from the landlords who have the misfortune to be co-sharers.

85. As to enhancement, it is submitted that express provision should be made, giving authority to enhance rents separately, where there is separate collection or separate agreement, as well as in cases of collusion

of the other sharers with the ryot. It would no doubt be a modification, or rather an alteration of the existing law in favor of landlords, but it is undoubtedly a much needed reform. At present an infinitesimal shareholder, who colludes with the tenant, and who is hushed by a present or so, can very easily do material injury to the large shareholder. No notice of enhancement can now be properly issued, and no suit maintained for enhancement. This evil should be remedied. The present law gives an unfair advantage to the ryots over the landlords, and this for no fault of the latter.

86. Section 71 should be so changed as to give like authority to all landlords, and not only to proprietors according to their respective rights, or it should be expunged. The word "proprietor" in clauses 3 and 4 should be changed for "landlord," and the provision as to written authority, if preserved, should be on plain paper. The words "subject to the provisions of section 70 and," in section 75, should be expunged, for reasons stated in the objections to section 70.

87. The word "permanently," in clause (a), section 77, should be expunged; this word will encourage ryots to change the condition of the land, and thus deteriorate it for some time. This word will be the source of litigation and animosity between the two classes. The proviso attached to this clause should be expunged for reasons stated in the objections to section 29. Clause (b) of section 77 contains a very objectionable provision. It is an innovation of a most reprehensible character. This clause sets at naught the custom of the country, so dear to every class of its people. It allows the tenant to deteriorate the land and lessen its value, and thus lessen also the security of the rent for which the land is hypothecated. As has been already suggested by the Hon'ble Peary Mohun Mookerjea, the cutting down of trees will not only lessen the value of the land, but will involve the landlord in expenses to make the land useful either for replanting or cultivation. It is a provision not only objectionable on these private grounds, but also for public reasons. The work of years and generations is allowed to be undone at a moment by the provision contained in this section. It is a right which never belonged to the tenants, to which they never lay any claim, and for which there has not been any dispute between landlords and tenants. In short, it is the creation of a new right in favor of the ryot without any necessity or justification. And, moreover, such a provision will give rise to endless quarrels and misunderstanding, without conferring on the landlord any compensation for the losses he will have to suffer.

88. The words "without objection made by," in clause 1, section 79, should be changed for "with the consent of." This alteration would be in keeping with the provision contained in clause 7 of this very section. The word "non-transferable" in clause 4 should be expunged. It does not matter whether the holding is transferable or not, if the ryot does not cultivate the land nor pay rent, and if he has gone away from the neighbourhood, the landlord should be able to make arrangements for getting its rent by letting it out instead of being forced to sue for arrears or put it up to sale, simply because a holding is transferable. The landlord is not bound to wait. It should be the tenant's look-out to take care of his holding, and not the landlord's to watch over it for him. The present law does not make any such distinction, yet no hardship is felt on that score. The word "non-transferable" in clause 5 should also be expunged. The law, as at present stands, gives the landlord a right to eject a tenant having a right of occupancy, which right is transferable in some places according to custom, or under a decree for arrears of rent in case of non-payment within 15 days. This provision is a salutary one. If the right is of such value as is likely to leave the ryot a balance in case of sale, then the ryot should also be able to protect the same by timely payment of the arrears. By expunging this word, section 152 of the Bill would be made applicable to all ryots. The provision contained in the first part of the second para. of clause 5 is too wide. It would necessitate the bringing of a suit even in case of expiry of the term of lease granted to a tenant at will. The words "and not being such a ryot, as is mentioned in section 26," in clause 7, should be expunged for reasons stated against conferring rights of occupancy to ryots holding for more than 3 years.

89. *Sections* 90 *and* 91. Why the landlord should get only 6 p. c. and the tenant 12 p. c. as interest—why this invidious distinction has been made, does not appear. The same rate of interest should be provided in both cases.

PART II.

90. THE procedure provided by Part II of the Bill for suits between landlords and tenants is faulty not only for the new complications created, but also for omissions of necessary provisions. The abolition of distraint is one of the most objectionable changes made in the Bill. The only ground on which this has been excluded is that the power given by the law has been abused in Behar. But as there are stringent checks to, and heavy penalties imposed on, such abuse, the law may be allowed to remain in the same shape as it stands, if nothing better can be done. There are still numerous provisions in this Bill, which may be abused either by or against the landlords, and these stand without such checks or penalties for their abuse. Hence the likelihood of an abuse is not a cogent or sufficient ground for abolishing a remedy in case of non-payment of rent, and this without any adequate measure being provided to supply its place. In cases of ryots having rights of occupancy, the provision for bringing the holding to sale may be said to be an efficacious remedy for the realization of arrears, but such a provision not being applicable to other ryots, there remains no adequate remedy for the realization of rents of such ryots. The existence of this provision has a salutary effect. It is not always necessary to resort to it or to invoke the assistance of courts to enforce it. Oftentimes the notice of distraint or even the threat has the effect of inducing the ryot to an arrangment for the payment of the rent. Even in case of ryots having a right of occupancy, the provision is beneficial. Instead of putting the holding to sale, and selling the ryot out of his lands, it would be advantageous to him to have his crops attached and sold. As to other ryots, the crops are the only property, the sale of which is likely to pay the arrears. Under such circumstances the present law and procedure as to distraint should be adopted in the Bill. It is also submitted that, if possible, some easier rules should be added, which would give further facilities for distraint and for bringing the crops to sale. The penalties attached to unlawful distraints should of course remain intact.

91. The concurrent jurisdiction given to the Civil and the Revenue Courts to entertain and decide suits for enhancement and abatement of rents of ryots having a right of occupancy, is a new complication. This will not be advantageous to either party. When the landlord has sued for enhancement of rent of some ryots in the Civil Court, some other ryots may go to the Collector and sue for abatement. This would harass the landlord, who would be obliged to keep two sets of servants to look after the cases pending before two different courts. Then again, there would be difficulty in furnishing evidence in two different courts, which may be situate at great distance from each other, at the same time. The two courts may come to diametrically opposite conclusions as to the prevailing rate or the productive power of the land. Moreover, the distinctions made in the different classes of cases in order to find exclusive and concurrent jurisdiction will result in frequent dismissals for want of jurisdiction. A suit for abatement by a ryot holding at fixed rates is cognizable by the Civil Court only (clause (b), section 153.) A like suit by any other ryot is cognizable also by the Collector. If by mistake a suit under clause (b), section 153, is brought by a ryot holding at fixed rates in the Collector's Court, it will have to be dismissed, and before that is done, the fact of such a suit being instituted in the Collector's Court will be liable to be used against the ryot to show that he does not hold at fixed rates.

92. There is no clear enumeration of the suits that are cognizable duly by the Civil Courts—those that may be preferred only to the Collector, and lastly those that may be instituted in both courts. Scanty provisions as to these are scattered over the whole of Part II. Although jurisdiction is given to the Collector to entertain suits for enhancement of ryots having a right of occupancy, yet no provision has been made as to the procedure to be adopted by him when the suit is against only one or two ryots. Sections 99 to 111 (both inclusive)

relate only to cases where the proceedings are against the whole body of ryots. Clause (b) of section 119 relates simply to service of notice. There is no provision that the proceedings before the Collector are to be conducted according to the procedure laid down in chapter 18 of the Bill. The words "suits for the recovery of rent," in clause 1, section 165, it is submitted, cannot cover a case for "enhancement of rent" before the Collector. Section 120 provides only the making of rules by the Board of Revenue for conducting proceedings in order to prepare a Table of Rates, an enhanced *jamabandy*, or a settlement *jamabandy*, so those rules cannot be the guides for individual cases of enhancement or abatement. Section 121, clause (a), makes it simply optional with the Collector to follow or not the procedure laid down in the Civil Procedure Code as to summoning witnesses on production of documents. Such unlimited authorities should on no account be given to any court.

93. No provision has been made as to how the decrees made by a Collector are to be executed. Generally speaking, the vesting of the powers to decide enhancement and abatement cases on the executive authorities is objectionable. The work will generally be done by Deputy Collectors of little experience and legal training. In these cases many important questions of right and law will arise, and to these such Deputy Collectors will be able to do scant justice. To engage qualified pleaders before such authorities will be more costly and difficult; generally the cases will have to be conducted by revenue agents and moktears. The Deputy Collectors and Collectors had the trial of rent suits in their hands under Act X of 1859 for some time, and that trial caused many difficulties, and at last the Civil Courts were entrusted with the whole work, and they are performing the work to the satisfaction of all. For reasons submitted above, it is necessary that the procedure portion of the Bill should be recast and modified, and clear provision should be made that all suits that may arise between landlords and tenants should be cognizable exclusively by the Civil Courts.

94. The restrictions to enhancement imposed by the words "a landlord who has a peramanent and transferable interest in land," in section 95, clause (a), and by the words "and if a period of not less than 10 years of such interest remains unexpired," in clause (b) of the same section, should be done away with. If the provision as to enhancement *jamabandy* be left in the hands of the executive authorities, provision should then be made that if in the course of its preparation any question of right is raised between the landlord and any individual or body of tenants, that should be submitted to the Civil Courts for adjudication. No provision has been made or restrictions imposed on the Collector to keep intact the present *jamabandy* of the land. He may, if he chooses, lower the rates prevalent. It is necessary that some such provision should be made.

95. Section 104 makes it optional with the Commissioner and the Board of Revenue to hear or not the persons to be affected by the Table of Rates when passing final order on the same. That this is a most reprehensible provision is apparent, and as such should be left out.

96. The words "or special equitable considerations," in clause (a), section 105, are vague. If such a provision is allowed to vary the rates mentioned in the Tables, there will be no end to litigation. It is also submitted, there is no consideration provided under which the landlord may claim more favourable rates than those mentioned in the Tables. Under such circumstances the Tables to be of efficacy should be equally binding on both parties. It has been already submitted, and it is repeated again, that provision should be made by which the existing rates may not be shaken or lowered, nor any loophole afforded to tenants for claiming abatement.

97. The provision contained in section 108, clause (a), as to the conclusive nature of an enhanced *jamabandy*, is more objectionable than that relating to the Table of Rates. The only exception made is in case of addition or diminution of lands by alluvion or diluvion. But in places where there are uncultivated lands in the midst of cultivated fields, or where there are pieces of lowlands close by, the ryots generally make encroachments on these lands. Again in *uthit patit* mehals there is necessity for measurement of lands and settlement of the *jumma* from time to time.

Great injustice would be caused to landlords if the enhanced *jamabandy* is held to be conclusive evidence of the amount of rent payable, and if no further enquiry is allowed in the last mentioned cases, or in other words, on the ground No. 2 of section 22. Again, there appears to be something more objectionable in the provision of this clause. A contract made by a ryot, to pay an amount more than what is stated in the enhanced *jamabandy*, would not be binding if made within the fixed period of 10 years. Why such a restriction is imposed on private contracts, cannot be easily explained. In the course of things, no ryot would make such a contract, but if on account of good reasons the ryot does it, why should not that be enforcible? The foregoing remarks and objections apply equally to the like provisions contained in clause (a) of section 111. It is therefore submitted that the provisions should be so altered that no injustice may result, at least in the aforesaid cases.

98. The sentence "the provisions of clause (a) of section 108 shall apply to such settlement *jamabandy*," in section 113, is very objectionable. This makes a settlement *jamabandy* conclusively binding between the landlord and tenant for 10 years, and restricts any enhancement or abatement during the said period. In the first place, it should be borne in mind that the Table of Rates and the enhanced *jamadandy* apply or relate only to the ryots having a right of occupancy. Such is not the case with a settlement *jamabandy*. This applies to all classes of ryots whether they be tenants at will, or those that have been occupying for more than three years, or those that have acquired a right of occupancy. How then can such a settlement *jamabandy* be made conclusively binding for 10 years? Again, even in case of ryots having a right of occupancy, this restriction is quite inapplicable. The settlement *jamabandy* simply states the rent paid and the quantity of land held by the ryot. It does not make any enhancement of rent. The rent stated in it may not have been changed for the last 30 years. The landlord, perhaps a new purchaser, is unable to ascertain the ryots and the rents payable by them, as also the quantity and plots of land held by them; so he seeks the aid of the court in the same way as he would under section 38 of Act VIII of 1869 (B. C.) Why then is he to be bound by the record of such an enquiry for 10 years, is undoubtedly beyond comprehension. It is true that there are words, *viz.*, "either in excess of the former rent or rates or otherwise" in the latter part of section 113 which indirectly authorize the Collector to declare that the landlord shall be entitled to receive rents at rates which may be in excess of the former rates; but, properly speaking, this would be beyond the scope of the provisions of the sections. In a case for a settlement *jamabandy*, the Collector is to enquire into the prevailing rates and the rents paid by the ryots, but he is not to enquire what grounds there exist for enhancement. The landlord would not be in a position to adduce any evidence whatever for such a purpose. Again, if the Collector is authorized to award an enhanced rate or an increased amount, then it no longer remains a settlement *jamabandy*, but virtually becomes an enhanced *jamabandy*. These objections apply equally to section 114 as far as they make the provisions of section 111 applicable to the settlement *jamabandy*. It is also submitted that the word "ryots," used in sections 112 and 113, should be changed for "tenants." The provisions as to settlement *jamabandy* are virtually a reproduction of section 38, Act VIII of 1869 (B. C), with modifications. It is therefore necessary that the records should be not only of "ryots," but of all classes of "tenants."

It is necessary to repeat here that save and except a measurement by Collector in order to the preparation of a settlement *jamabandy*, there is no other mode of measuring the land through the court in case of any resistance or objection. This is so even as to sole owners. As for a sharer, he can neither measure himself nor ask the assistance of the courts to do that for him.

99. Costs for the preparation of a Table of Rates should be borne equally by the landlord and the tenants, if not by tenants only. This procedure as to preparation of a Table of Rates is virtually a mode of enhancement of the rent of a whole body of tenants. If costs can be realized in enhancement suits from tenants against

whom a decree is made, why should not they be made liable for the costs of the preparation of a Table of Rates? Again in enhancement suits the dispute ends with the decree for enhancement; here another suit is necessary for the enforcement of the Table of Rates. Further, the Table of Rates once framed gives a license to the ryots to enjoy the profits of the land for a number of years without any further molestation or even any risk of enhancement.

The Table is moreover his charter, wherein is recorded his right of occupancy determined once for all, and as such is a conclusive document in his favor and against his landlord. Under such circumstances, it is he who reaps the greatest advantage by the Table of Rates. For these reasons it is submitted that the ryots should bear at least half the costs, if not the whole, for the preparation of these Tables. If no such provision is made, the heavy cost necessary to have a Table of Rates framed will be a reason which will deter landlords from resorting to the procedure provided for the same. They whould rather choose to bring solitary enhancement suits, and thus not only harass the ryots, but realize as much of the cost as they can.

100. No provision has been made as to the costs of a settlement *jamabandy*. The necessity for such a record is occasioned by the fault of the tenants, and therefore the whole of the costs for the preparation of such a record should be borne by them. If the Collector is obliged to make detailed enquiry owing to the tenants not responding to his call or not furnishing him with true information, at least in that case they should be saddled with the whole cost of the preparation of the *jamabandy*.

101. It is true that a very wide discretion has been given to the Collector in section 121 (a) for giving and apportioning costs; but it is apprehended that the same may not cover the cases mentioned, or that in the absence of express provisions the Collector may not be willing to exercise his discretion in these matters.

102. In clauses (a) and (b), section 123, the word "tenant" should be used for the word "ryot." Clause (a) of section 127 should be expunged altogether. If the pay of Government officers, like the Collector or the Deputy Collector, be realized by Government as costs for the preparation of a Table of Rates and an enhancement *jamabandy*, &c., then there will be no cases at all in which the Collector will be asked to make anything of the kind. These records are, properly speaking, for settlement of disputes between landlord and tenants, and it is the duty of Government to do it by its own officers. After the payment of so many taxes and so much expence for litigation, which now-a-days has become almost unbearably heavy, if the pay of such officers is taken or wanted, it would be virtually shutting the door of justice and forbidding settlement of claims of the contending parties.

103. Section 128 should be altogether expunged. The provision as to costs for the preparation of the enhanced *jamabandy* contained in section 106 (a) should be modified so as to entitle the landlord to recover the whole of the cost for the preparation of such record. It would be the greatest injustice to disallow the cost of such a proceeding or to curtail it in any way. The provision which allows the Collector to distribute the cost over three years is most objectionable. Even the rent enhanced would not cover the ordinary interest on the outlay necessary to get a Table of Rates and an enhanced *jamabandy* made. Taking into consideration the various restrictions and limitations imposed on enhancement, and the length and delay of the proceedings in connection with it, and lastly the amount of the cost necessary to bring the same to a successful termination, it is but fair that the restrictions and qualifications as to costs contained in the aforesaid sections should be done away with.

104. Section 130 is vague. The suits mentioned in the same may be simple suits for arrears of rent. It would be complicating matters if such suits are allowed to be tried by Collectors. It is true that in such suits the question of rate of the quantity of land, and the classification of the same, may be in dispute, and that these questions may be dealt with by the Collector as a case of settlement *jamabandy*, but then there is no adequate procedure laid down in the Bill, by following which the Collector may do full justice to such cases.

Many of the provisions relating to settlement *jamabandy* would be quite inapplicable to such cases. Then again the question of and procedure in appeal would be of some difficulty. It is submitted that in order to keep uniformity of practice and procedure in the two courts, this section may be left out. It should also be borne in mind, that in all probability no such transfer will be made, as it cannot properly be made before the defendants have filed their written statements. If therefore the transfers are made after the same, it would be harassing the parties very much. They would have to incur a good deal of cost till then, and all this would go for nothing. Not to mention that the expenses for attending the courts, payments to pleaders, expenses for issuing summons on witnesses, &c., would go for nothing, and the cases would have to be begun anew with a new staff of agents; and this may be at a quite different place. If yet it is deemed expedient to have some enquiry by the Collector on the subject-matter of these cases, some provision may be made by which the Civil Court may be authorized to ask the Collector to make an enquiry and report the result to the Civil Court. This, it is submitted, would be less expensive and less harassing to the parties. It may be here observed that in all such cases the Collector or even the Deputy Collector will rarely go to the locality; the whole investigation will be done by a *Kanoongo* or at most by a Sub-Deputy. This may as well be done by a Civil Court Ameen. Hence very little gain will result from transfers.

105. The words "*khudkast* ryot" used in the provisos to sections 142 and 210 have not been defined in the Bill. These words have been put in as found in the old regulations. The qualification added to the provisos and the other provisions of the Bill make it unnecessary to keep these undefined words in the provisos.

106. The Government has from time to time pledged itself to the landlords of the country, that it would devise some measure by which facility of realizing rent might be ensured to the landlords. With this very object in view a summary procedure was also framed. Now that so many important concessions are proposed to be made in favor of the tenants, and so many rights and privileges are proposed to be granted to them, all at the expense of the landlords, it is but natural that they (the landlords) should look for some advantage given to them in return. The most important point that touches them daily is the realization of rents. If they find that great facility has been given them in this respect, they can to some extent bear their loss in other ways. Clear and indisputable provisions as to enhancement is another important subject which concerns them most. As to this last there has been no improvement made in the draft Bill; on the contrary, some very objectionable provisions have been proposed, which would restrict the application of the existing principles of enhancement. Then as to the realization of rent, no facility has been given. Even the existing summary procedure as to distraint has been done away with, and a so-called abbreviated procedure in rent suits has been provided. This abbreviation consists virtually in recording evidence. It is necessary only to refer to it here simply for the purpose of showing that, properly speaking, the Bill does not afford any facility whatever for the realization of rent. All the difficulties in obtaining a decree and the greater ones of executing the same remain unremedied. It is therefore that some suggestions are submitted here below with reference to this important question, *viz.*, realization of rent.

107. By section 64 every landlord is bound to bring to sale the tenure or under-tenure or occupancy-holding, the arrears of which he wishes to realize. Why not then extend the procedure contained in chapter 16 as to summary sale (of course with necessary modifications) to all tenures, under-tenures, and occupancy-holdings which are liable to be sold for arrears of rent? Such an extension would, it is submitted, be a move in the right direction. That such a procedure would be less costly and less troublesome to all parties concerned cannot but be admitted.

Now that provision has been made for keeping counter-receipts and for the yearly settlement of accounts and statement of rent, no great difficulty will be felt in summarily adjusting any dispute that may arise as to the amount of arrears due before the sale actually takes place.